IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8506 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

VAGHELA RANJITSINH DEVISING

Versus

STATE OF GUJARAT

---

Appearance:

MR CH VORA for Petitioners

MS MANISHA LAVKUMAR, ld.AGP for Respondents

---

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/05/2000

ORAL JUDGEMENT

This Special Civil Application has been filed by large number of employees of the Government of Gujarat from Bhuj or the villages nearby in Kachchh-Bhuj District who have been working as Drivers, Peons, Ward Boys, Naiks, Police Constables, Assistants, Surveyors including certain retired employees etc. seeking a direction to quash and set aside the decision of the respondent authorities so as to charge these petitioners in respect of the land in question for allotment to them at the rate of Rs.900/- per sq.mtr.

2. The case of the present petitioners is that they

had applied for allotment of the land for constructing residential houses on different dates in the years 1989, 1990 and 1991, on the basis of 'no profit no loss' (Betha Thale) subject to the terms and conditions under Government resolutions dated 1.5.1963 and 28th March 1989. On the basis of the applications made in the year 1991 and the years prior thereto as above, the Collector, Bhuj arranged a computer draw which was held on 21st October 1994 in respect of a part of the land bearing Survey No.870. It is the case of the petitioners that as per this computer draw, the plot numbers to be allotted to the respective petitioners were also indicated as has been given in Annexure.A against the names of respective petitioners. However, the State of Gujarat did not accept the proposal made by the Collector, Bhuj on the basis of the aforesaid computer draw as the Government decided to grant the aforesaid land i.e. land admeasuring 32181.6 sq.mtrs. of Survey No.870 situated at Bhuj, Dist. Kachchh at the price of Rs.72,40,860/to the Gujarat Housing Board in pursuance of the Govt. resolution dated 8th April 1996. Thus, the question of the allotment of the land to the petitioners could not materialise despite the computer draw held on 21st October 1994 and the same land which was made the subject matter of the computer draw for the purpose of allotment to the petitioners by the Collector, Bhuj was given to the Gujarat Housing Board by the Govt. in the year 1996 vide G.R. dt.8.4.1996. The case of the petitioners is that the resolution dated 8th April 1996 also contained the condition that 200 claimants who are Govt. employees who intend to join the scheme of the Gujarat Housing Board will be entitled to priority which is meant for the higher income group. The Collector, Bhuj thereafter, in pursuance of the office order dated 20th June 1996, granted the above referred land to the Gujarat Housing Board. The concerned Govt. employees who had applied in 1991 and years prior thereto and who had participated in the computer draw were not desirous to join the scheme of the Gujarat Housing Board as they were interested in the open plot of land as per the computer draw held on 21st October 1994. They protested against the action of the Govt. granting the same land to the Gujarat Housing Board, but despite this protest, no action was taken in favour of the employees and therefore, 89 Govt. employes preferred Special Civil Application No.3221 of 1998 before this Court challenging the Govt. resolution dated 8th April 1996 and the order dated 28th June 1996 passed by the Collector in pursuance thereof. In this Special Civil Application, a prayer was also made that open plots of land be granted in favour of the petitioners. A set of other eight Govt. employees had also filed petition

being Special Civil Application No.6394 of 1998. These Special Civil Applications Nos. 3221 of 1998 and 6394 of 1998 were decided by a co-ordinate Bench of this Court (Coram: Hon'ble Mr.M.S.Shah, J.) on 21st July 1998 with the directions as under:

"Having heard the learned counsel for the parties, it appears to the Court that it would be just and proper to dispose of this petition with the following directions:-

(i) The Gujarat Housing Board shall, within two months from today, invite applications for allotment of tenaments and it will be open to the petitioners and other Government employees also to submit their applications and those employees out of the petitioners and other Government employees who submit their applications expressing their willingness for allotment of the plots shall be given priority under the scheme as per the Government Resolution dated 8.4.1996.

(ii) Those Government employees who do not apply in response to the aforesaid scheme of the Gujarat Housing Board shall submit their applications to the Collector, Kutch within three months from today, and the Collector, Kutch will then submit a proposal to the Government indicating the available lands at and/or near Bhuj which can be considered for allotment for housing to the Government employees. This shall be done within six months from today.

(iii) Upon the Government receiving the proposal from the Collector as aforesaid, the Government shall take appropriate decision within three months from the date of receipt of the proposal from the Collector."

3. The State Govt. thereafter took a decision to grant the plots of land admeasuring 100 sq.mtrs. to each of the present petitioner from the part of the same Survey No.870 for residential purposes at the rate of Rs.900/- per sq.mtr. However, the grievance raised by the petitioners in this petition is that they could not

be charged at the rate of Rs.900/- per sq.mtr. inasmuch as they are not responsible for the escalation of the price for all these years. Their case is that they had applied in the year 1991 and even in the years prior thereto, the computer draw for them had also been held in the year 1994 and if the same land for which the computer draw was conducted to finalise the allotment for them was given to the Housing Board by the Government in the year 1996 and thereafter the petitioners had to approach this Court by way of the Special Civil Applications as aforesaid and now the Govt. has taken a decision after the directions issued by this Court to allot the pieces of 100 sq.mtrs. of land to the petitioners in the year 1999, they cannot be made to suffer merely because the Govt. has taken a long time in taking a decision with regard to the allotment of the land in favour of the Housing Board upto 1996 and uptil now in case of petitioners and the prices have gone up as per the market rates of the land in question. It has been submitted that the land which was earlier proposed to be allotted to the petitioners was given to the Housing Board at the rate of Rs.225/- per sq.mtr. in 1996 and the land which is now allotted to the petitioners is also out of the same Survey No.870 for which they are required to pay four times than the rates at which the Housing Board was given this very land. It is submitted that the rate of Rs.900/- per sq.mtr. is highly excessive and disproportionate as compared to that of Rs.225/- per sq.mtr. The contention which has been raised by Mr.Vora on behalf of the petitioners is that the petitioners are Govt. servants and low paid employees, some of them are retired and they should be given the lands at the same price at which it was given to the Housing Board, i.e. at the rate of Rs.225/- per sq.mtr. even if it is held that they are not to be given at subsidised rate. It has also been submitted that the petitioners cannot be taxed merely because the question of allotment has remained pending for all these years and but for the decision which was taken by the Govt. in the year 1996 to allot the very same land to the Housing Board, the petitioners would have got the land at that time itself. Mr.Vora has placed reliance on a decision of a co-ordinate Bench of this Court in the case of Ashutosh Cooperative Housing Society Ltd. v. State reported in 1995 (2) GLR 1419.

4. The present petition was filed in October 1999 and on 28th October 1999, the following order was passed while issuing the notice:

"Notice returnable on 5.11.1999. Non-deposit of the entire amount of Rs.90,000/- per allottee

within the time limit stipulated in the notice dated 7.10.1999 issued to the petitioner no.32 and similar notices issued to the other petitioners shall not adversely affect the petitioners' claim for allotment of the land in question.

Direct service is permitted.

Sd/-

(M.S. Shah, J.)"

Thereafter when the matter came up before the Court on 22nd March 2000, the names of petitioners nos. 25 and 39 were sought to be deleted and the same were accordingly deleted. Rule was issued and the interim order dated 28th October 1999 was continued. In response to the Rule issued by this Court, an affidavit-in-reply dated 3rd May 2000 has been filed under the signatures of the Resident Deputy Collector of Bhuj. The respondents have traversed the claim of the petitioners and it has been stated that the Land Allotment Committee vide resolution dated 16th April 1994 had recommended to the Collector to conduct the computer draw in order to determine the persons to whom the land was to be given and this Land Allotment Committee made such recommendations in order to avoid any subsequent allegations or discrimination and to fairly determine the persons to whom such land may be granted pursuant to their applications. The factum that the computerised draw was conducted by the Collector has been admitted, but it has been stated that under the resolution dated 28th March 1989, the Collector had no powers with regard to the allotment of the land. The case of the respondents is that the Collector sent the proposal to the State Govt. for the grant of the allotment of the land on 10th November 1994, but vide resolution dated 8th April 1996, the State Govt. considered various representations of the Gujarat Housing Board pending before it and vide resolution dated 8th April 1996 decided to allot the said land to the Gujarat Housing Board, but in the very same resolution, it was also mentioned that the priority was to be given to the petitioners in the scheme of the allotment by the Housing Board. It has been further submitted that whereas the Special Civil Applications nos.3221 of 1998 and 6394 of 1998 were decided by this Court and the directions issued by this Court also included the employees who had not applied in response to the aforesaid scheme of the Gujarat Housing Board, they could also submit their applications to the Collector. It has also been stated that the resolution dated 20th March 1998 which also applies to the Govt. employees makes it clear that the land is to be allotted as per the prevalent market rate

on the day on which the said land is given to the concerned persons and this resolution applies to all categories of persons including the present petitioners who are Govt. employees. As per this reply, it is a policy decision of the Govt. which is uniformly applicable to all the persons including the Govt. employees. The land is to be given after charging the present market value and the market value has to be determined according to the definite norms after considering the location, sale details, the purpose for which the said land is acquired, the area, development use etc. and after considering all these factors, the District Valuation Committee in its meeting held on 24.3.1999 determined the said price of the land at the rate of Rs.900/- per sq.mtr. It was submitted that though the land to be given to the petitioners is out of the same Survey Number, i.e. 870, it is at a better location than the location of the land which was given to the Housing Board although the petitioners while applying had expressed their willingness to accept the land anywhere in Bhuj. A copy of the resolution passed by the Land Allotment Committee on 16th April 1994 has been enclosed as also a copy of the order passed by the Collector for computer draw and the proposal sent by the Collector to the State Government for grant of allotment of the land to the petitioners. It has been then stated that the lands came to be allotted to the present petitioners only in the year 1999 after the State Govt. granted the sanction and approval to the proposal sent by the Collector and the computerised draw was merely taken to determine the persons to whom the land was to be allotted. The authority empowered as per the resolution dated 28th March 1989 to allot such land is not the Collector but the State Govt. which is the proper authority to do so and accordingly the Collector had forwarded the proposal to the State Govt. and the State Govt. granted sanction to the same in the year 1999. Thus, the land sought to be granted to the petitioners situated at Survey No.870 admeasuring 7 acres and 38 gunthas is situated next to the ST Workshop and the present land allotted by the State Govt. is on the south of Bhuj, next to Mundra for which the Valuation Committee has determined the price at the rate of Rs.900/- per sq.mtr. as on 24th March 1999. The powers of determining the price are vested in the Land Valuation Committee and the land allotted is far superior and of a higher market value than the earlier proposed land which was undulated and uneven. It has been submitted that considering the availability of the land and other relevant factors, the State Govt. took a policy decision to allot the present land to the petitioners. In the end

of this affidavit-in reply, it has been stated that the land was allotted to the petitioners on the basis of the proposal sent by the Collector. Ms.Manisha Lavkumar, ld.Asst.Govt.Pleader has made a pointed reference to the contents of Annexure.A and has made reference to the resolution of the Revenue Department annexed with the reply as Annexure.A and issued by the Govt.of Gujarat on 28th March 1989 and has submitted that the decision was taken by the Land Allotment Committee and the Land Allotment Committee has to decide the price at which the land is to be allotted without putting the same to auction and it has also been submitted that the rates as are fixed by the Land Allotment Committee are applicable and have been applied not only in the case of the Govt.employees like the petitioners, but also in the case of military personnel, retired employees, freedom fighters and labourers. She has submitted that in fact, no land allotment had been made in favour of the petitioners on the basis of the computer draw in the year 1994. According to her, the computer draw was held only to select the employees to whom the land was to be given and there was no decision to allot the land to any of the petitioners and in fact it was only a proposal made by the Collector and such proposal had never been accepted by the Collector because in respect of the same proposal of land, the request of the Housing Board was made way back in the year 1988 which was under consideration. She has submitted that in no case any land can be allotted at a price lower than the rates which are fixed by the Land Allotment Committee and the Land Allotment Committee in this case has decided and fixed the price of the land at Rs.900/- per sq.mtr. i.e. Rs.90,000/- for 100 sq.mtrs. to be allotted to each of the petitioners. The decision of the Allotment Committee has already been accepted by the Govt. and the same has been acted upon and it is to be given effect not only for the petitioners but also for other categories of the employees like labourers, etc. and no decision is there on account of which a departure can be made in this case of the petitioners so as to charge them at a rate lower than the rates fixed by the Allotment Committee. She has submitted that no right had accrued to the petitioners to pay at the market rates prevailing in 1994 on the basis of the computer draw as alleged. In such cases, if any time is taken for diverse reasons by the Govt., it cannot be said that even if the decision is taken for allotment at a later point of time, the price has to be taken and recovered from the allottees with reference to the date on which the applications were made or the date on which the proposals are made by the Collector and her submission is that in the instant case, the date of the computer draw cannot be

made the decisive factor for the purpose of fixing the rate at which the petitioners are to be charged. She has submitted that the price as was fixed by the Land Allotment Committee has been accepted and has to be uniformly applied to all the categories in respect of whom such decision has been taken and the petitioners do include in this very category and therefore, there is no justification to make a departure in the case of the petitioners so as to allot the lands to them at a price lower than the one which has been fixed by the Land Allotment Committee. According to her, the date of allotment should be the touch stone for the purpose of deciding the rate at which the prices is to be taken from the allottees and the same cannot be tested with reference to any date earlier to that.

5. Learned Counsel for the Govt. may be right in making the submission that the Land Allotment Committee's decision is to be applied in such cases uniformly as accepted by the Govt. and that in fact the allotment had never been made in favour of the petitioners earlier, i.e. in the year 1994 and that it was only by the computer draw by the Collector on which the proposal was made and such proposal was considered by the State Govt. and it could not acquire the status of actual allotment. However, the question which still remains for consideration before this Court is that so far as the petitioners are concerned, they had applied in the year 1991 or in years prior thereto. Further, this very land out of Survey No.870 which is being now allotted to the petitioners for which the decision has been taken now in the year 1999 so as to charge Rs.900/- per sq.mtr. was available throughout. Merely because the process has taken long time of about eight to nine years, the petitioners who are employees of the Govt. and are low paid employees cannot be subjected to the requirement of paying the price of the land at a higher rate as is prevailing in the year 1999. This decision which has been taken in 1999 could be taken earlier also at the time when the Govt. decided to transfer the land for which the computer draw was held to the Gujarat Housing Board and had such decision been taken at that time keeping in view all the relevant considerations, the petitioners would have got the allotment at a price much lower as it was prevailing at that time. In such cases, the factum of allotment of the date on which the decision is taken to allot the plot of land cannot be considered in isolation, keeping the entire sequence of past events in oblivion. In such case, there is no question of departure from the uniform application of the rates decided by the Land Allotment Committee. The Government

while taking the decision can always take into consideration the reasonable factors and that will be permissible as a part of reasonable classification for making a departure in appropriate cases. The cases of those employees who had applied in the year 1991 or years prior thereto would form a different class by themselves and for such class of employees while taking the decision, the important factor of the pendency of their applications for eight years cannot be lost sight of. Even otherwise, in making such allotments the employees have to be allotted the plots of land at a reasonable price and when their case from the very beginning is allotment on the basis of 'no profit no loss'. Even if the allotment is made now in 1999, it should be considered as if it was made earlier. Merely because the Collector is not the final authority for the decision and he only makes proposal and such proposal was turned down not because there was any fault in the proposal or on the part of the petitioners or in the scheme or the procedure which was followed by the Collector, but because the Govt. decided that the very land is to be given to the Housing Board and it is now only after the decision and directions of this Court in Special Civil Applications Nos.3221/98 and 6394/98 that the Govt. has decided to allot lands to the petitioners. The pendency of the applications and the litigations which took place in between are the factors which have to be taken note of. In the case of Ashutosh (supra), a co-ordinate Bench of this Court had observed that, "it cannot be gainsaid that the inordinate delay in consideration of the application is highly improper by any stretch of imagination unless exceptional circumstances are brought on record to justify such delay." In the instant case, the only circumstance which has been pointed out is that the Govt. decided to give the land to the Housing Board instead of giving to the petitioners but the land which is now decided to be allotted was also available at that time and therefore, in the opinion of this Court, this circumstance cannot be an exceptional circumstance on the basis of which the employees can be made to suffer to pay the higher rates of the land which was available throughout. In the instant case, the decision has been taken by the Govt. in the year 1999 that too after the Court's order. The question arises that had the Govt. not taken the decision in the year 1999 and had it taken the decision even thereafter i.e. after eight to nine years now, could the employees be further made to pay the price of that year which would be still higher than Rs.900/-? Thus, the time which has been spent in the instant case to the extent of eight to nine years is purely and simply fortuitous circumstance as a result of

the inaction and nonapplication of mind and lack of will and desire to take up the issue in right earnest at the right time despite the availability of the land. Even if it is assumed in favour of the respondents that the land which is now decided to be allotted to the petitioners is at a little better location, that they would also not justify the higher price which is about four times than the land which was given to the Housing Board at Rs.225/per sq.mtr. in the year 1996. Even if it is taken that on account of the better location of the land, the price is required to be little higher, by no means it could be more than double, i.e. Rs.450/- per sq.mtr.instead of Rs.225/- per sq.mtr. In any case, this Court finds that the Government while taking a decision to allot these plots of land to the petitioners at the rate of Rs.900/per sq.mtr. as per the decision of the Land Allotment Committee, has not addressed itself to the relevant and important considerations with regard to the pendency of the applications of the petitioners for long period to the extent of eight to nine years and the steps which have been taken with regard to the allotment of the plot by the Collector on the basis of the computer draw and the litigation which has taken place between the parties during this interregnum period.

6. In the facts and circumstances of this case, this Court finds that this petition filed on behalf of the large number of employees and which may affect even more number of employees to the extent of 280, the Govt. may reconsider the question of fixing the price of the land in the instant case in the light of the observations made hereinabove and may decide the rates again in the light of the observations made in this order so as to reduce the price of Rs.900/- per sq.mtr. to a reasonable extent and for that purpose the date on which the decision was taken in favour of the Gujarat Housing Board, i.e. 8th April 1996 may be considered to be the relevant date because the decision with regard to the petitioners should have been taken in normal course simultaneously to the point of time when the decision was taken for giving the land to the Housing Board. The Govt. shall take up such exercise of reconsideration immediately when the certified copy of this order is produced before the concerned authorities and the concerned authorities shall take a decision at the earliest possibility opportunity, but in no case, later than two months from the date the certified copy of this order is produced before them.

7. Learned Counsel for the petitioners has submitted that although the requirement of making a deposit in terms of the notice dated 7th October 1999 was noticed by

this Court while passing the order dated 28th October 1999 and it was ordered that non-deposit of the entire amount of Rs.90,000/- per allottee shall not adversely affect the claim for allotment of the land in question, the petitioners who were even ready at that time to make the initial deposit of Rs.15,000/-, such amount though offered, was not accepted by the Govt. It is, therefore, made clear that the petitioners may even now be asked to make such initial deposit subject to the final decision which the Govt. may take in compliance of this order and the rest of the amount may be charged from the petitioners as per the decision which may be taken now. Such initial deposit of Rs.15,000/- per allottee may be accepted even now within a period of three weeks from the date the certified copy of this order is produced before the concerned Collector. This Special Civil Application is accordingly allowed in the terms as aforesaid and the Rule is made absolute to that extent. In the facts and circumstances of this case, the parties are left to bear their own costs. Direct service is permitted.

(M.R. Calla, J.)

******

Sreeram.